

EXHIBT 3

COPY

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

LORI ANN MORRIS,
Plaintiff,

Vs.

CIVIL ACTION NO.
3:02-CV-962-T

FLORIDA TRANSFORMER,
EDWARD NEAL THOMPSON,
et al.,

Defendants.

* * * * *

DEPOSITION OF EDWARD L. ROBINSON, taken
pursuant to stipulation and agreement before
Haley A. Phillips, Certified Shorthand Reporter,
and Commissioner for the State of Alabama at Large,
in the Law Offices of Henry L. Penick, 319 17th
Street, Birmingham, Alabama, on Thursday, June 22,
2006, commencing at approximately 10:05 a.m.

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overturn versus the impact by the other truck, I think that we can make some separation on that.

Q. Well, wouldn't a biomechanic -- biomechanical expert be the proper person qualified to determine what physical injuries on Mr. Morris' body were caused by what particular objects during the accident sequence?

A. I'm not trying to do that.

Q. All right, sir.

A. My general experience in overturned trucks is that the injuries that Mr. Morris received -- the very serious injuries I've never seen before in an overturned truck accident, so I would think it highly unlikely that these injuries would have been associated with the overturn. On the other hand, impact by another vehicle of comparable mass at 70 miles an hour or 60 miles an hour would be expected to cause some very serious injuries.

Q. But you're not testifying as to any

specific injuries on Mr. Morris' body were caused by any specific objects during the accident sequence?

A. I'm not trying to bring it down to that point, no.

Q. You're not going to give any opinions on that?

A. I'm just going to say that I think his serious injuries were due to the impact, not the overturn.

Q. While we're on that, what -- at what speed -- Did you calculate a speed of the -- And I'm going to call for purposes of this deposition -- And we're going to get this confused I'm sure, because I confuse it in my mind. I'm going to try to differentiate between Mr. Morris' vehicle by calling it the Kenworth vehicle and the vehicle driven by Mr. Thompson by calling it the Peterbilt vehicle. Now, we both know that that's just referring to the tractor -- or the truck part of the rig, not the trailer?

1 A. Somewhere in north Shelby County down
2 around Chelsea.

3 MR. BROUGHTON: We may be able to
4 find that in the phone book.

5 A. Yeah, maybe you will.

6 Q. Who else -- While we're on
7 Mr. Messerschmidt, give me the names of
8 every person that assisted you in your work
9 in any way whatsoever, whether they were
10 employees of yours or whether you consulted
11 them for any data or calculations or
12 opinions in this case.

13 A. One of my other employees, Gary Johnson,
14 was with Bill Messerschmidt at the site
15 inspection. Really need two people to map
16 the site. We use a total station. And we
17 don't call it surveyors, because we're not
18 licensed civil engineers. But it's the
19 same sort of techniques and precision.

20 Q. Total station is the computer program?

21 A. Total station is the survey instrument.
22 Some people might call it a transit, or
23 whatever. It's a device you put out and

1 memory to remember everything
2 that they said in their
3 affidavits.

4 Q. Do you remember anything that you took
5 exception to?

6 You read them yesterday?

7 A. Yeah.

8 No, I don't remember anything that I
9 think is misstated or wrong. There may or
10 may not be. He could have been going more
11 than 70. He could have been going 65. But
12 I think Mr. Thompson himself said that he
13 was outrunning his lights, because he said
14 I couldn't see the truck in time to stop.
15 And if you're driving too fast for the
16 range of your lights, regardless of what's
17 in the road, you're outrunning your lights.

18 Q. Are you an --

19 A. He made that statement.

20 Q. Are you an expert on the range of
21 headlights from a Peterbilt?

22 A. No.

23 Q. Have you done any investigation, research

1 in this case to determine the range of the
2 headlights on the Peterbilt?

3 A. No. But he said he was outrunning them.

4 Q. Where in his affidavit did he say -- You're
5 talking about his statement that he could
6 not see the truck in time to avoid the
7 collision. You've interpreted that to mean
8 he's saying he was, quote, outrunning his
9 lights?

10 A. Right.

11 Q. Have you done -- In this case, have you
12 done any work to determine at what distance
13 away from the Kenworth vehicle that vehicle
14 would have been visible to an oncoming
15 driver of --

16 A. No.

17 Q. -- a Peterbilt truck?

18 A. No, not -- not for a driver of a Peterbilt
19 nor for this specific overturned truck
20 case.

21 Q. It's your opinion -- Is it your opinion
22 today that any person who fails to avoid
23 hitting an object in the highway at night

1 is outrunning their lights?

2 A. For a stationary object in the highway in
3 front of them, yes, I would say they are.

4 Q. Is there anybody else that shares that
5 opinion?

6 A. Not based on the way they drive. But the
7 statements in the literature, Paul Olson's
8 book, for example, the Alabama statute all
9 say that you have your vehicle under
10 control so that you can avoid or stop for
11 objects within the range of your lights.

12 Q. Have you ever testified in any other cases
13 to the contrary?

14 A. I don't recall. I know that we talked
15 earlier about a truck case with a man who
16 was wearing dark clothing. But he stepped
17 out in front of the truck as I recall, so
18 it wasn't a matter of something that was in
19 the road and there as a stationary object.

20 Q. Are you aware of any studies or tests done
21 by anyone with facts similar to this case
22 to determine the perception-reaction and
23 avoidability of an accident of this type?

1 belt.

2 Q. Are you aware of any studies that have been
3 done to determine injuries received from
4 seat belts?

5 A. No.

6 Q. You're not testifying today either way as
7 to whether or not the fatal injuries to
8 Mr. Morris were caused by the seat belt?

9 A. I don't know. It's certainly possible in
10 the kind of impact that he got that just
11 the inertia forces and the weight of his
12 body could have done significant damage
13 like breaking bones.

14 Q. Have you ever worked in a case for either
15 side where there was a fatality in a
16 rollover?

17 A. I'm sure I have. I can't put my finger on
18 one right now. But, yeah, it's not
19 uncommon for fatalities in rollovers with
20 cars.

21 Q. Well, you're not ruling out the fact that
22 Mr. Morris could have been fatally injured
23 during the rollover in this case?

A. In my own mind, yes. Because the nature of the injuries is not such that would be on the left side of his body. I mean, he would have bilateral injuries. And that's not going to happen when he -- from that rollover.

Q. But you don't know what injuries caused his death?

A. I haven't -- All I've done is look at the autopsy report. I haven't tried to make any determination beyond that.

Q. And it would be fair to say that Mr. Morris could have received fatal injuries in this case during the rollover?

A. I don't believe that. Because he's belted in, and I don't believe he would have ejected from the simple rollover with his seat belt on.

Q. We don't know -- You don't know -- Because you're not a medical expert, you don't know whether or not he received fatal injuries before ejection, do you?

A. Well, I don't think a medical expert could

1 necessarily tell you that. He could tell
2 you what the -- what injuries were
3 associated with the fatality. But I don't
4 think you've got the kinds of forces
5 involved with the rollover by a factor of
6 ten or 100 to cause the kind of injuries
7 that you can get from these impacts.

8 Q. But that -- that -- And I understand -- I
9 understand you want to give your personal
10 opinion, observation that you think it was
11 more like -- that you think it was more
12 likely in your personal opinion that the
13 impact forces or that injuries received
14 after the impact with the Peterbilt could
15 have caused Mr. Morris' death. But what
16 I'm getting at is you don't have a
17 professional opinion because you're not a
18 medical -- you're not a medical expert,
19 you're not a biomechanical expert, you
20 haven't determined what specific injuries
21 were caused by what specific objects or
22 forces in this case, so you can't give an
23 opinion to any degree of reasonable medical

1 certainty as to what caused Mr. Morris'
2 death in this case?

3 A. No, I can't give a medical opinion or a
4 biomedical (sic) engineering opinion. I'm
5 just basing it on experience looking at
6 other vehicle wrecks over the last 40 years
7 as to what kind of forces won't cause what
8 kind of injuries.

9 Q. But you do agree that people have been
10 fatally injured in rollover accidents?

11 A. They have.

12 Q. The next comment on Defendant's Exhibit 2
13 says no evidence the belt was slash
14 something?

15 A. Was not worn.

16 Q. No evidence the belt was not worn except
17 the belt locked fully.

18 A. Uh-huh (positive response). In extended
19 position.

20 Q. What does that mean?

21 A. Well, belt locked fully extended.

22 Q. Belt locked fully extended.

23 A. Right.

Well, he's still going to hit the truck, but he's going to be going slower when he hits the truck. If he brakes for 144.7 feet and he starts off braking at 70 miles an hour, then he's going to be going in the low 20s when he impacts.

Q. By your calculations -- If I'm understanding you correctly, by your calculations in Defendant's Exhibit 5 and Defendant's Exhibit 6 assuming optimum conditions of braking efficiency and perception-reaction, the Peterbilt is still going to hit the Kenworth at 23 miles an hour?

A. Right. If he doesn't steer off the main part of the road onto the shoulder.

Q. Right. So there's no way to avoid -- There's no way that Mr. Thompson could have avoided this collision?

MR. PENICK: Object to the form of the question.

Q. Correct?

A. No. That's incorrect. One, at that speed

he should have been able to steer off.

And, two, if the coefficient -- If the braking efficiency is a little higher or he reacts a little faster, he can still manage to stop in time to not hit the truck.

Q. How's he going to do that? Show me -- Show me your calculation where he avoids -- where he's able to stop?

No. The one you've already done.

A. Oh, it's not in there.

Q. You haven't done a calculation?

A. I told you I had done a number of calculations and that this was one example of the calculations. And if you want me to do a calculation to see what would be involved if he stops, I can do this. It's not on this page right here.

Q. Have you done a calculation using -- What would his speed be -- What would the speed at impact be if you used the .5 drag factor on Defendant's Exhibit 5?

A. Do you want me to calculate it?

Q. Please.

1 A. Okay.

2 I think I've got an error in that
3 calculation. It's higher speed than that.
4 It's 48 miles an hour at .6 for 144.7. For
5 .5, it would be 52.

6 Q. And what about for .6 -- I mean for .4?

7 A. Well, that's not an applicable case on
8 rainy slick tires and so forth. But if you
9 use a .4 times -- It would be 56.

10 Q. So it -- At best using your calculation
11 with a .6 drag factor, the Peterbilt would
12 have still hit the Kenworth at 48 miles an
13 hour?

14 MR. PENICK: Object to the form of
15 the question. He said it
16 would be traveling at that
17 speed when he got to the
18 Kenworth, not that it would
19 hit the Kenworth.

20 THE WITNESS: Right.

21 Q. But it still impacts at 48 miles an hour?

22 MR. PENICK: Object to the form of
23 the question. He didn't say

1 that.

2 A. If he doesn't steer away. Certainly if
3 he --

4 Q. Where -- All right. Where would you have
5 suggested with a couple seconds of
6 perception-reaction time at 3 a.m. in the
7 morning on September 2, 2004 -- where would
8 you have suggested Mr. Thompson steer his
9 vehicle to avoid this accident?

10 A. Onto the shoulder.

11 Q. Which way, right or left?

12 A. Right.

13 Q. And how --

14 A. Because the trailer is on the left.

15 Q. And do you know what's over there on the
16 right side of that highway?

17 A. I believe we do. All I see in that
18 vicinity is a paved shoulder.

19 Q. How many seconds did it take you to find
20 that information?

21 A. I didn't time it.

22 Q. Well, I did. Would you know it took you 15
23 seconds to find out that there was a paved

1 shoulder over there on the right side of
2 I-85?

3 MR. PENICK: I'm going to object
4 to the form of the question.

5 A. Might well have taken me two or three --
6 Well, it might have taken me an hour if I
7 had gone back to the computer and pulled
8 that file down again.

9 Q. Do you know how far the drop-off is from
10 that shoulder down to the bottom of the
11 ravine over on that side of the road?

12 MR. PENICK: Objection to the
13 assumption that there's a
14 ravine on that side of the
15 road.

16 A. I don't see one.

17 Q. It's your testimony that there's no
18 drop-off --

19 A. No, I'm not.

20 Q. -- on that side of the road?

21 A. I'm saying I don't see a ravine in that
22 area of the road in the aerial photograph.

23 Q. But that's going to be your testimony to

1 the jury, that with the time and the
2 situation facing Mr. Thompson he should
3 have driven his eighteen-wheeler with
4 transformers on the back of it off the side
5 of that highway?

6 A. Onto the shoulder, yeah.

7 Q. Did you -- Have you given that opinion
8 before today?

9 A. No. Nobody has asked me where would he
10 steer before today.

11 Q. If he's trying to stop his vehicle in the
12 highway, the best he can do according to
13 your calculations is hit that Kenworth at
14 48 miles an hour; correct?

15 MR. PENICK: Objection to the form
16 of the question.

17 A. No, that's not correct. As we've said,
18 these are -- this is one example of the
19 calculations. If he had responded quicker
20 or if he could see further, then that speed
21 would be lower.

22 Q. The -- And the speed is higher at a .4 drag
23 factor. And what's the maximum speed that

1 you calculated?

2 A. A drag factor four really is not pertinent
3 to this case. But, now, if you want to do
4 that, we could calculate it with a drag
5 factor --

6 Q. Oh, I thought you just did. Did you
7 calculate --

8 A. I could calculate with a .2 if you want to.

9 Q. What did you calculate at .4? That's all
10 I'm asking. You just did it; right?

11 A. At .4 I calculated 56. Now, if you wanted
12 to go down to a .2, we could calculate
13 above 60.

14 Q. What I would like for you to do, though --
15 As I understand it, the calculation in
16 Defendant's Exhibit 6 is inaccurate;
17 correct?

18 A. That's what I'm seeing. Let me run though
19 it one more time. I think I made a mistake
20 about midnight last night.

21 Q. You made this calculation last night?

22 A. Yes, I did.

23 Yeah. 48, 52, 56.

1 understand what that is.

2 And then on Defendant's Exhibit 6 and
3 your copy, which is now Defendant's Exhibit
4 7 which shows the -- still shows the
5 incorrect value of 23.8, also shows the
6 correct values we just went over of 48
7 miles per hour up to 56 miles per hour at
8 impact assuming drag factors of .4 through
9 point -- or .6 down to .4; right?

10 MR. PENICK: Object to the form of
11 the question.

12 A. And also assuming a perception-reaction
13 time of two seconds.

14 Q. That's where I'm going with that. I want
15 to find out what's in these calculations.
16 Because you've got here on the top a value
17 of 350 feet. And I'm not familiar with
18 that -- where that number came from.

19 A. That's my perception or my understanding
20 from the literature of what you might
21 expect from high-beam lights.

22 Q. From -- In other words, you're saying
23 that's how far the high beams on the

Peterbilt would have illuminated objects?

A. Yeah. And I think that's a very conservative distance, but that's what I --

Q. Where did you get the 350 feet?

A. There are -- I don't know. Just general literature that I've read over the years. I think there's a figure on that, maybe in Olson's book. I'm not sure. What usually they give you is the illumines intensity at various test points. They don't say how far you can see, because that does depend on the brightness and size of the object you're illuminating.

Q. Well, doesn't it also depend on the other conditions at the time?

A. Well, I'm assuming clear weather, no rain and a driver that's alert and no fog and you have an object in the road in front of you.

Q. So that's under the best conditions of weather and visibility?

A. I don't know whether you call that -- I guess you call that the best.

1 Q. You --

2 A. There's no visual impairment due to the
3 weather.

4 Q. Did you gather that 350-foot figure prior
5 to the time you made this calculation last
6 night?

7 A. Yeah. I've seen that figure many times or
8 heard that figure many times mentioned over
9 the years.

10 Q. When you used it last night, did you go to
11 a reference source to get that figure?

12 A. I tried to refresh my memory. And as I
13 say, most references give you the illumines
14 intensity as a function of test points.
15 But as I recall, Paul Olson's book does use
16 a 350 feet for --

17 Q. I just -- I just want to know what
18 reference source you used last night to
19 refresh your recollection.

20 A. Last night I looked at Paul Olson's book.
21 I looked at the federal regulations. I
22 looked at several SAE papers. I looked at
23 another reference book or two. Most of

1 these didn't give any specific information.

2 Q. What did Paul Olson's book give -- Which
3 one gave you 350 feet?

4 A. He agreed with 350 feet. If you want, I
5 can go back and dig up the reference. And
6 he refers to another article in the book.

7 Q. What's Paul Olson's book?

8 A. I don't the exact title of it.

9 Q. I just want to know -- What I'm trying to
10 find out is if last night when you used
11 this 350 that you got it from a reference
12 source specifically and -- or if it's
13 something you extrapolated in your mind.
14 Or if you got a specific number from a
15 specific page of a specific paper, I would
16 like a copy of that specific page from that
17 specific reference source?

18 A. I'll see if I can find the Paul Olson
19 reference. But this is also consistent
20 with prior experience in both looking at --
21 with an awareness as to how far do high
22 beam lights go down the road and looking at
23 other articles that refer to perception and

1 right?

2 A. Right.

3 Q. Those would not have been visible to
4 Mr. Thompson; correct?

5 A. Not likely.

6 Q. The -- Any running lights on the topside --
7 I mean on the right side of the tractor and
8 the trailer after it rolled over had they
9 been on would have been -- would not have
10 been visible by Mr. Thompson as he
11 approached? They would have been vertical;
12 correct?

13 A. Well, they would be up eight feet off the
14 ground. For a trailer in the usual
15 driver's eye height in a cab is about nine
16 and a half feet. So he would have been
17 on -- slightly above eye level of the
18 trailer marker lights. And the trailer end
19 that's lower in the median, he would have
20 been several -- two or three feet higher.
21 Those lights he probably could have seen.

22 Q. Have you done -- Have you done any tests or
23 studies with exemplars to determine whether

1 Q. Do you know the distance from the
2 windshield of the Kenworth to the front
3 bumper of the Kenworth?

4 A. I don't recall that number, but it's
5 probably somewhere in the literature. I
6 don't see a vehicle data. I thought we had
7 a vehicle data section that gave
8 the published truck data. I don't see it
9 right now. It's -- a digital truck index
10 would normally pull that up and put it in
11 the file.

12 Q. Eight to ten feet?

13 A. From the windshield to the front of the
14 truck?

15 Q. To the front bumper.

16 A. In that ballpark.

17 Oh, here's what I'm looking for.

18 Q. What section was that in?

19 A. I don't know. It's in here somewhere. But
20 it's a copy of the Kenworth model T600.
21 Distance from the front axle to the front
22 bumper, 46 inches; to the back of the cab
23 from the front axle, 74 inches. All we

1 could do is sort of scale it. It doesn't
2 give that particular dimension. And I
3 don't know how authentic that drawing is
4 from a scale of factors other than the ones
5 they give. It looks like it's just over
6 about five feet, about five feet two inches
7 from the front of the hood to the base of
8 the windshield.

9 Q. All right. And the -- Do you know what the
10 terrain looked like off the right side of
11 I-85 going north towards Atlanta at the
12 point where the Kenworth rolled over?

13 A. All I have is the aerial photographs. I
14 can see the shoulder -- paved shoulder of
15 the road. I don't see in that
16 photograph -- Okay.

17 Q. If the Kenworth headlights were on, do you
18 know what they -- after the rollover, do
19 you know what, if anything, they would have
20 illuminated out in that direction?

21 A. Well, the trees and bushes and such.

22 Q. Do you know if there were any trees and
23 bushes and such in the direction that the

1 would not have been off out in the median;
2 would not have been --

3 A. I didn't say the taillights. I said the
4 side marker lights.

5 Q. I know. I've gone to another -- I've gone
6 to the taillights.

7 A. Oh, I'm sorry. We're going to another
8 question.

9 Q. Yeah. Well, it's the same -- it was the
10 same question, but you didn't mention
11 anything about the taillights. The
12 taillights I'm assuming would not have been
13 visible to --

14 A. My assumption was that the rear of the
15 trailer was pointing so far into the median
16 that they wouldn't have been visible.

17 Q. Right. And it's possible -- It's certainly
18 possible that the headlights on the
19 Kenworth tractor were pointing off -- in a
20 direction off the side of that road that
21 they would not have been detectable?

22 A. That's possible.

23 Q. And --

A. Well, at least they wouldn't have been easily discernable. They probably would have been detectable if you had known to look for them.

Q. And we don't know that any of the side lights would have been detectable any closer than whatever that distance would have been -- that the headlights of the Peterbilt would have illuminated the bottom of the truck anyway?

A. Well, I haven't looked into that. I don't know.

Q. On any of your opinions that you intend to offer in this case, have you had what I would characterize as a peer review of those opinions?

A. Peer review in discussion within our organization but, no, not outside.

Q. Only you, Johnson and Messerschmidt?

A. Right.

Q. Were there any things that -- any observations, conclusions, opinions that Messerschmidt or Johnson had that you

1 that --

2 A. On the diagram.

3 Q. Where does it show in the accident report
4 where the front bumper of the Morris
5 tractor was at impact?

6 A. It shows a point of impact in the left lane
7 of the trooper's diagram. And if that
8 impact was underneath the driver's
9 position, then the front of the truck would
10 have been some seven or eight feet maximum
11 beyond that point which would have not even
12 completely blocked the right lane.

13 Q. Where does it show in that accident report
14 where the front bumper of the Morris --

15 A. It shows --

16 Q. -- Kenworth tractor was?

17 A. -- where the point of impact was. And we
18 have to deduce that from the dimensions of
19 the truck. He doesn't try to show the
20 position of the truck after it comes to
21 stop from the slide.

22 Q. And -- Well, let me ask you this. Will you
23 rely on the testimony of the investigating

reserve any objections you might have, but I do want to mark them as exhibits in this case.

Q. That's all I've got. Thank you.

EXAMINATION

BY MR. PENICK:

Q. Doctor, I have one question. Do you have an opinion based upon reasonable -- a reasonable degree of accident reconstruction certainty whether Edward Thompson, the driver of the Peterbilt, could have avoided this accident?

MR. BROUGHTON: Object to the form.

A. Yes.

Q. What is that opinion?

A. That if he is, in fact, braking and slowing down as he approaches the Morris truck -- I can't keep them separate. But as he approaches the Morris truck, there was an emergency lane and space beyond that that he could have steered onto. And I think

1 that the light pattern indication is not an
2 accurate representation where the tractor
3 was located after the overturn and that he
4 could have gone around the Morris vehicle.

5 Q. Okay. What is the significance of absence
6 of skid marks in this case?

7 A. That he either had defective brakes or that
8 he didn't get on the brakes until very
9 shortly before the impact. In other words,
10 he hadn't had his brakes on long enough to
11 cause the wheels to stop rotating and heat
12 up the contact with the pavement and leave
13 marks.

14 MR. PENICK: That's all at this
15 time.

16 **EXAMINATION**

17 **BY MR. BROUGHTON:**

18 Q. Just one follow-up. And I want to give you
19 full opportunity, Mr. Robinson. At this
20 time are there any other opinions that
21 you've given in any of these affidavits or
22 preliminary reports or final reports or
23 documents generated by you and

1 Messerschmidt and Johnson that you now want
2 to change besides the ones that you have
3 changed in the last -- this last session of
4 your deposition?

5 MR. PENICK: I object to the form
6 of the question to the point
7 that he claims that he's
8 changed his testimony, which
9 he has not.

10 A. What I've changed was results of the
11 calculations that I made an error in making
12 the calculation. No, I don't think of
13 anything else that needs changing or
14 adding.

15 Q. That's all I have. Thank you.

16 (Plaintiff's Exhibit 1 was marked
17 for identification.)

18

19

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FURTHER DEPONENT SAITH NOT

21

* * * * *

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23

1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA:

3 ELMORE COUNTY:

4 I, Haley A. Phillips, Certified Shorthand
5 Reporter and Commissioner for the State of Alabama
6 at Large, do hereby certify that I reported the
7 deposition of:

8 **EDWARD L. ROBINSON**

9 who was first duly sworn by me to speak the truth,
10 the whole truth and nothing but the truth, in the
11 matter of:

12 LORI ANN MORRIS,

13 Plaintiff,

14 vs.

15 FLORIDA TRANSFORMER,

16 EDWARD NEAL THOMPSON,

17 et al.,

18 Defendants.

19 In The U.S. District Court

20 For the Middle District of Alabama

21 Eastern Division

22 Case Number 3:02-CV-962-T

23 on Thursday, June 22, 2006.